

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MAURICE DARONTE DAVIS,

No. 2:22-cv-0864-SCR-P

Plaintiff,

v.

MESKATH UDDIN,

ORDER AND

Defendant.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in this civil rights action filed pursuant to 42 U.S.C. § 1983. In the operative complaint, plaintiff alleges an Eighth Amendment physical and sexual assault claim against defendant Dr. Uddin based on a medical examination that occurred on March 9, 2020. Currently pending before the court is defendant's motion for summary judgment. ECF No. 31. The motion has been fully briefed by the parties. ECF Nos. 36, 43. For the reasons explained below, the undersigned recommends granting defendant's motion for summary judgment.

I. Summary Judgment Standards Under Rule 56

Summary judgment is appropriate when it is demonstrated that there "is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party asserting that a fact cannot be disputed must support the assertion by "citing to particular parts of materials in the record...." Fed. R. Civ. P. 56(c)(1)(A). Summary

1 judgment should be entered, after adequate time for discovery and upon motion, against a party
2 who fails to make a showing sufficient to establish the existence of an element essential to that
3 party's case, and on which that party will bear the burden of proof at trial. See Celotex Corp. v.
4 Catrett, 477 U.S. 317, 322 (1986). “[A] complete failure of proof concerning an essential element
5 of the nonmoving party’s case necessarily renders all other facts immaterial.” Id. If the moving
6 party meets its initial responsibility, the burden then shifts to the opposing party to establish that a
7 genuine issue as to any material fact actually does exist. See Matsushita Elec. Indus. Co. v.
8 Zenith Radio Corp., 475 U.S. 574, 586 (1986).

9 In attempting to establish the existence of this factual dispute, the opposing party may not
10 rely upon the allegations or denials of their pleadings but is required to tender evidence of
11 specific facts in the form of affidavits, and/or admissible discovery material, in support of its
12 contention that the dispute exists or shows that the materials cited by the movant do not establish
13 the absence of a genuine dispute.¹ See Fed. R. Civ. P. 56(c); Matsushita, 475 U.S. at 586 n.11.
14 The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might
15 affect the outcome of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477
16 U.S. 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630
17 (9th Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury
18 could return a verdict for the nonmoving party, see In re Oracle Corp. Securities Litig., 627 F.3d
19 376, 387 (9th Cir. 2010). In the endeavor to establish the existence of a factual dispute, the
20 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
21 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’
22 differing versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose of
23 summary judgment is to ‘pierce the pleadings and to assess the proof in order to see whether there
24 is a genuine need for trial.’” Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory
25

26 ¹ On April 3, 2023, and October 25, 2023 (ECF Nos. 23, 31-1), plaintiff was advised of the
27 requirements for opposing a motion brought pursuant to Rule 56 of the Federal Rules of Civil
Procedure. See Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc); Klingele v.
Eikenberry, 849 F.2d 409 (9th Cir. 1988).

1 committee's note on 1963 amendments).

2 In resolving the summary judgment motion, the evidence of the opposing party is to be
 3 believed. See Anderson, 477 U.S. at 255. All reasonable inferences that may be drawn from the
 4 facts placed before the court must be drawn in favor of the opposing party. See Matsushita, 475
 5 U.S. at 587. Nevertheless, inferences are not drawn out of thin air, and it is the opposing party's
 6 obligation to produce a factual predicate from which the inference may be drawn. See Richards
 7 v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902
 8 (9th Cir. 1987). Finally, to demonstrate a genuine issue, the opposing party "must do more than
 9 simply show that there is some metaphysical doubt as to the material facts.... Where the record
 10 taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no
 11 'genuine issue for trial.'" Matsushita, 475 U.S. at 587 (citation omitted).

12 II. Plaintiff's Claims

13 In his verified complaint, plaintiff states that he was scheduled to see Dr. Uddin regarding
 14 a groin injury, but also back pain on March 9, 2020.² ECF No. 1 at 3. Dr. Uddin asked plaintiff
 15 to pull up his shirt to check a disc. ECF No. 1 at 3. While Dr. Uddin was checking plaintiff's
 16 back, he began to punch plaintiff in the back. Id. Plaintiff told Dr. Uddin that hurt and asked
 17 why he was punching him. Id. Dr. Uddin stated, "I'm a doctor I know what I'm doing," and hit
 18 plaintiff four more times. Id. Plaintiff said, "Hey, knock it off, that shit hurts." Id. Dr. Uddin
 19 backed away. Id.

20 Dr. Uddin then told plaintiff to pull his pants down so he could check plaintiff for a
 21 hernia. ECF No. 1 at 3. Dr. Uddin walked to the door, looked both ways, and told plaintiff to lie
 22 down on the chair. Id. Dr. Uddin approached plaintiff, grabbed plaintiff's genitals with his left
 23 hand and pushed plaintiff's left thigh outward with his right hand. Id. Plaintiff said, "Hey, that's
 24 not my groin. That's my dick." Id. Dr. Uddin said, "It's all part of the same thing," and
 25 squeezed plaintiff's groin area. Id. Plaintiff sat up and said, "dude you're hurting me." Id. Dr.
 26

27 ² "A plaintiff's verified complaint may be considered as an affidavit in opposition to summary
 28 judgment if it is based on personal knowledge and sets forth specific facts admissible in
 evidence." Lopez v. Smith, 203 F.3d 1122, 1132 n. 14 (9th Cir. 2000).

1 Uddin instructed plaintiff to sit up, stand, twist, and bend at the hip to touch his toes. Id.
2 Thereafter, he told plaintiff, “Nothing is wrong I’m taking your [lower bunk/lower tier] chrono.”
3 Id.

4 **III. Defendant’s Summary Judgment Motion**

5 Defendant moves for summary judgment based on the lack of a triable issue of fact
6 concerning plaintiff’s claim that he was physically assaulted during defendant Dr. Uddin’s
7 examination of his lower back because defendant used only medically acceptable methods of
8 evaluating his back pain. ECF No. 31 at 17-19. “There is no substantial evidence from which the
9 Court could conclude that Defendant examined Plaintiff’s lower-back pain ‘maliciously and
10 sadistically for the very purpose of causing harm,’ as is required for an Eighth Amendment
11 excessive force claim.” ECF No. 31 at 19.

12 Next, defendant contends that there is no genuine issue of material dispute on the sexual
13 assault claim because plaintiff admits that any touching was not done for the purposes of
14 defendant’s sexual gratification. ECF No. 31 at 19-24. “Defendant denies that he touched
15 Plaintiff’s penis during the medical encounter, as he did not perform a medical examination of
16 Plaintiff’s genitals. But, even if the Court were to credit Plaintiff’s allegations, instead, they do
17 not amount to a violation of the Eighth Amendment.” ECF No. 31 at 7. To the extent that
18 plaintiff testified at his deposition that defendant Dr. Uddin stated “I’ve seen bigger” at some
19 point during the examination, this comment amounts to verbal sexual harassment that is not
20 “unusually gross even for a prison setting” and does not violate the Eighth Amendment.³ ECF
21 No. 31 at 23-24 (citing Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996), as amended by 135
22 F.3d 1318 (9th Cir. 1998)).

23 Defendant also asserts that plaintiff’s claim for emotional damages is barred by the Prison
24 Litigation Reform Act. ECF No. 31 at 24-26. Finally, defendant submits that he is entitled to
25 qualified immunity because his medical examination did not violate the Eighth Amendment and
26

27

³ The court’s screening order did not include any claim of sexual harassment and, as a result, it is
28 not addressed herein. See ECF No. 8. The court understands any such statement by defendant as
evidence of his intent, and not as factual support for a separate claim for relief.

1 because it was not clearly established that his conduct violated the Constitution. ECF No. 31 at
2 26-30. “No reasonable doctor would have understood that he is violating the Constitution when
3 checking a patient for pain, even if the examination itself incidentally causes some pain.” ECF
4 No. 31 at 29.

5 In his opposition, plaintiff indicates that defendant is minimizing his touches as taps or
6 palpations, but they were punches with a closed fist. ECF No. 36 at 2. As evidence of
7 defendant’s malicious intent, plaintiff points out that defendant punched him four more times in
8 the back after plaintiff complained that it was causing him pain. ECF No. 36 at 13. Plaintiff
9 contends that there is a genuine issue of material dispute in this case because “[p]erforming a
10 medical procedure without informed consent is a technical assault and battery.” ECF No. 36 at 6.
11 Finally, plaintiff submits that his Eighth Amendment rights were violated because the defendant
12 violated CDCR rules, policies, and regulations.⁴ ECF No. 36 at 18. Plaintiff submitted two
13 separate declarations signed under penalty of perjury as well as exhibits in support of his
14 opposition which have been considered by the court. ECF Nos. 38-40.

15 By way of reply, defendant asserts that the physical contact in this case was only
16 incidental to the scope of the medical examination for plaintiff’s complaints of lower-back pain
17 and groin pain. ECF No. 43.⁵ According to defendant, plaintiff’s assertion that he did not
18 consent to any portion of the medical examination is contradicted by the allegations in the
19 complaint as well as plaintiff’s own deposition testimony. ECF No. 43 at 3-4. “Although
20 Plaintiff claims he was sexually assaulted during the medical encounter, that does not equate to an
21 overall lack of consent for Defendant to perform any type of examination on Plaintiff.” ECF No.
22 43 at 4. Even assuming that plaintiff’s description of the medical examination is true for purposes
23 of the pending summary judgment motion, the touching by defendant does not amount to an
24 Eighth Amendment violation. ECF No. 43 at 6. Defendant submits that “[i]t cannot be said that,

25 ⁴ The remainder of plaintiff’s opposition describes his bases for disputing particular facts and are
26 more appropriately addressed in the Undisputed Material Facts section of these Findings and
Recommendations.

27 ⁵ To the extent that defendant utilizes disparaging comments and name calling in the reply brief,
28 he is admonished that this is not conducive to the fair administration of justice. See ECF No. 43
at 2.

1 for the purposes of a doctor examining a patient, this type of force is ‘repugnant to the conscience
 2 of mankind.’” ECF No. 43 at 8 (citing Hudson v. McMillian, 503 U.S. 1, 10 (1992)).

3 Plaintiff also filed a sur-reply to defendant’s summary judgment motion for which he
 4 requested leave of court to file in order to have a “fair shot.” ECF Nos. 44-1 at 1; see ECF No. 44
 5 (sur-reply). This prompted defendant to file a motion to strike the sur-reply. ECF No. 45.
 6 Although a sur-reply is disfavored, plaintiff did request leave of court to file the sur-reply. See
 7 Hill v. England, 2005 WL 3031136, at *1 (E.D. Cal. Nov. 8, 2005) (citation omitted). The court
 8 finds good cause to permit the filing of a sur-reply in this case to allow plaintiff to respond to
 9 defendant’s assertion that his affidavits in opposition to summary judgment are just a sham and
 10 should be disregarded by the court. Accordingly, defendant’s motion to strike the sur-reply is
 11 denied.

12 In his sur-reply, plaintiff largely takes issue with defendant’s efforts to minimize and
 13 trivialize his case. ECF No. 44. Plaintiff emphasizes that defendant violated policy by not having
 14 additional staff present during plaintiff’s groin examination and that this amounts to deliberate
 15 indifference of plaintiff’s right to safety.⁶ ECF No. 44 at 4-5, 10. The defendant’s actions
 16 amount to a sexual assault because they induced “fear, shame, humiliation, and mental anguish”
 17 in plaintiff and because “the law does not state the length of time that is needed to commit sexual
 18 assault.” ECF No. 44 at 5, 7.

19 **IV. Undisputed Material Facts⁷**

20 At all times relevant to the allegations in the complaint, plaintiff was an incarcerated
 21 individual in the custody of the California Department of Corrections and Rehabilitation (CDCR).
 22 ECF No. 31-2 at 2 (Defendant’s Separate Statement of Undisputed Facts at No. 1).⁸ Defendant
 23 was employed as a Physician and Surgeon at California State Prison-Sacramento (CSP-SAC).
 24 DSSUF at No. 1. At that time, defendant had been a doctor for forty-three years. Id. Plaintiff is
 25

26 ⁶ This case is not proceeding on an Eighth Amendment claim of deliberate indifference to
 27 plaintiff’s serious medical needs or a violation of his right to safety. See ECF Nos. 8 (screening
 order), 11 (plaintiff’s notice on how to proceed).

28 ⁷ All facts are undisputed unless otherwise indicated.

⁸ Hereinafter referred to as DSSUF.

1 not a medical doctor and has never received any medical training. DSSUF at No. 3.

2 Plaintiff has a history of knee pain, back pain, and groin pain. DSSUF at No. 4. Plaintiff
3 further indicates that his groin was originally injured in 2016, and was reaggravated in 2019.
4 ECF No. 37 at 2 (Plaintiff's Response to Defendant's Undisputed Facts at No. 4). Plaintiff was
5 diagnosed with severe degenerative joint disease of the lumbar spine and a bulging disc at L3-L4,
6 mild degenerative joint disease for the remainder of his lumbar spine, and kidney issues. DSSUF
7 at No. 5. At various times, including before he started seeing defendant Uddin, plaintiff had
8 received a medical chrono for lower-bunk, soft shoes, and a weight restriction. DSSUF at No. 7.

9 According to defendant, plaintiff had a total of nine appointments with Dr. Uddin, and he
10 was personally seen at six of those appointments. ECF No. 31-3 at 3 (Declaration of M. Uddin at
11 ¶ 6). Plaintiff disputes this and testified at his deposition that March 9, 2020 was the first time
12 that he met Dr. Uddin even though his medical records indicate that Dr. Uddin was assigned to be
13 plaintiff's primary care physician in 2019. ECF No. 37 at 3 (citing Deposition at 33:5-34:25).
14 Defendant indicates that all of these medical appointments were uneventful and completed
15 without incident except for the March 9, 2020 appointment where plaintiff became angry at the
16 end of the encounter. ECF No. 31-3 at 3-5 (Uddin Declaration). Again, plaintiff disputes that
17 any appointments occurred prior to March 9, 2020, but does agree that "[e]verything past 3-9-
18 2020, was uneventful [and] without incident. ECF No. 37 at 4 (Plaintiff's Response at ¶ 12).

19 All CDCR documentation of medical encounters follow the widely used Subjective-
20 Objective-Assessment-Plan (SOAP) format, which includes plaintiff's subjective complaints of
21 any symptoms as well as medical staff's objective findings related to the complaints. DSSUF at
22 No. 14.

23 Prior to the medical appointment on March 9, 2020, plaintiff submitted several requests
24 for health care services, referred to as CDCR 7362 forms, complaining of back and groin pain.
25 DSSUF at No. 13.

26 **A. March 9, 2020 Medical Examination**

27 The medical encounter on March 9, 2020, began around 9:00 a.m. and lasted no more than
28 twenty minutes. DSSUF at No. 17. Plaintiff's chief complaints were for lower-back pain and left

1 groin pain. DSSUF at No. 15. Defendant's plan was to evaluate these complaints and rule out a
2 possible hernia, which can be associated with pain in the inguinal area (i.e., the groin).

3 **B. Lower Back Examination**

4 After defendant asked plaintiff to take a seat on the exam table, plaintiff complied and
5 lifted up his shirt to allow his back to be examined. DSSUF at Nos. 18, 19. Defendant was aware
6 that plaintiff suffered from chronic lower-back pain and chronic kidney disease. DSSUF at No.
7 20. As a result, defendant's examination focused on the costovertebral angle (CVA), which is the
8 acute angle formed on either side of the back between the twelfth rib and the vertebral column.
9 DSSUF at No. 20. To test for tenderness in this area, defendant started by applying gentle
10 pressure with his finger to different parts of the region inside the CVA, including the L3-L4 area.
11 DSSUF at No. 22. When this light pressure did not suggest tenderness, defendant Dr. Uddin
12 placed one hand over the region inside the CVA, and tapped that hand with the closed fist of his
13 other hand multiple times as he moved his hand in that region. DSSUF at No. 23. According to
14 defendant, “[t]his is a commonly used and widely accepted method for checking CVA
15 tenderness.” ECF No. 31-3 at ¶. Plaintiff disputes this and indicates that defendant punched his
16 back four times. Plaintiff's Deposition at 44:15-16, 52:21-53:4. There is no dispute that plaintiff
17 responded by indicating that he felt pain. DSSUF at No. 24. Plaintiff rated his pain as a six on a
18 scale of one to ten, when defendant was tapping his lower-back area. DSSUF at No. 26.
19 Defendant concluded that portion of the exam and noted that plaintiff's back pain was “mild” in
20 the medical progress notes. DSSUF at No. 25.

21 **C. Range of Motion Examination**

22 After defendant finished examining plaintiff's back, he performed several tests of
23 plaintiff's lower extremities to test for range of motion and neurological response to stimuli, and
24 did the same to his shoulders. DSSUF at No. 29. Defendant described plaintiff's range of motion
25 in his legs and shoulders as “fine and full.” DSSUF at No. 30. Plaintiff disputes that this portion
26 of the exam occurred because Dr. Uddin did not explain what he was doing and plaintiff did not
27 understand it. ECF No. 37 at 8.

28 At the end of this portion of the exam, defendant asked plaintiff to lower his pants and

1 expose his left groin area. DSSUF at No. 31.

2 **D. Groin Examination**

3 To preserve plaintiff's privacy during the next part of the physical examination, defendant
4 went to his office door and confirmed that no passers-by were in the hallway. DSSUF at No. 32.
5 Plaintiff disputes this and indicates that defendant Dr. Uddin violated CDCR policy by not having
6 an additional staff person present during this portion of the examination because plaintiff's pants
7 were down. ECF No. 37 at 9.

8 Defendant proceeded to perform a hernia examination on plaintiff which he determined
9 was necessary based on a review of plaintiff's chart which showed a four year history of
10 intermittent left groin pain. DSSUF at Nos. 33-34. Plaintiff disputes this by indicating that his
11 groin injury had not been treated properly in the past. ECF No. 37. The hernia examination
12 consisted of a visual inspection and palpation of plaintiff's groin to rule out any bulges or
13 abnormal movements. ECF No. 31-3 at 7 (Defendant's Declaration at ¶ 14). As part of the
14 hernia examination, defendant used a technique that involved lightly applying his fingers on the
15 inside of plaintiff's left groin area and upper thigh. DSSUF at No. 36. In response, plaintiff
16 indicated that there was some tenderness in this area. DSSUF at No. 37. As part of the medical
17 progress notes, defendant described plaintiff's response as tenderness in the left groin, along the
18 abductor magnus tendon. DSUF at No. 38.

19 Plaintiff acknowledged in his deposition that it was reasonable that defendant would
20 check for possible hernia, since hernias could happen in the groin area. DSSUF at No. 39 (citing
21 Plaintiff's Deposition at 63:1-5).

22 Defendant denies touching plaintiff's penis or performing any type of genital examination
23 during the March 9, 2020 visit. ECF No. 31-3 at ¶ 14. Defendant asserts that if a genital
24 examination was conducted, he would have requested an additional staff member to be present
25 and documented that in plaintiff's medical record. DSSUF at No. 41. Defendant further states
26 that any observation of plaintiff's genitals was only incidental to checking for the presence of a
27 hernia in his groin area. DSSUF at No. 33. Defendant denies making any comment, sexual or
28 otherwise, while touching plaintiff's penis. ECF No. 31-3 at ¶ 18 (Defendant's Declaration).

1 According to defendant, he did not touch plaintiff with the intent to harm him or for any type of
2 sexual gratification; rather, any touching was incidental to the physical examination that was
3 “limited in scope to evaluating his chief complaints of pain.” ECF No. 31-3 at ¶ 18. Plaintiff
4 agrees that, sometimes, doctors are required to touch a patient’s private area depending
5 on the patient’s stated medical complaint. DSSUF at No. 47.

6 Plaintiff disputes that the touching was for the purpose of a hernia examination. ECF No.
7 37 at 9. Plaintiff adamantly disputes that defendant had consent to perform any hernia
8 examination and asserts that defendant violated CDCR’s informed consent policy. ECF No. 37 at
9 10; ECF No. 40 at 121). Plaintiff indicated in his deposition that defendant touched his penis for
10 approximately six seconds by moving it to the side, and he did not stroke it or touch it in an up
11 and down motion. Plaintiff’s Deposition at 72:5-73:13. According to plaintiff, defendant said
12 “I’ve seen bigger than that,” which plaintiff thought at the time was referring to the bone in his
13 thigh. Plaintiff’s Deposition at 70:23-71:9. Plaintiff believes the touching was sexual in nature
14 only because defendant touched a “sexual part” without warning plaintiff that he would do so and
15 giving plaintiff the opportunity to move the penis himself. Plaintiff’s Deposition at 74:11-75:20;
16 116:1-19. Plaintiff admits he was angry during the encounter and “mentally hurt” because
17 defendant discontinued his lower-bunk medical chrono. DSSUF at No. 50. Plaintiff knew that he
18 could terminate the medical exam at any point. DSSUF at No. 54.

19 The remainder of the parties’ pleadings dispute plaintiff’s subsequent administrative
20 grievances, CDCR’s Prison Rape Elimination Act (“PREA”) investigation, and the California
21 Medical Board’s response to plaintiff’s complaint concerning defendant Dr. Uddin’s medical
22 examination. The court finds it unnecessary to detail those disputes herein because they are not
23 necessary to resolve the pending motion for summary judgment. To the extent that plaintiff
24 objects to the sealing of the declaration provided by D. Anderson describing CDCR’s PREA
25 investigation and moves to strike it from the record, the undersigned overrules plaintiff’s
26 objection because the court has not relied upon the challenged declaration to resolve the pending
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28

1 summary judgment motion. See ECF No. 48 (sealing order).⁹

2 **V. Legal Standards**

3 **A. Physical Assault**

4 “[W]henever prison officials stand accused of using excessive physical force in violation
 5 of the Cruel and Unusual Punishments Clause, the core judicial inquiry is... whether force was
 6 applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to
 7 cause harm.” Hudson v. McMillan, 503 U.S. 1, 7 (1992). The court’s inquiry into an excessive
 8 force claim focuses on the extent of the prisoner’s injury, “the need for application of force, the
 9 relationship between that need and the amount of force used, the threat ‘reasonably perceived by
 10 the responsible officials,’ and ‘any efforts made to temper the severity of a forceful response.’”
 11 Hudson, 503 U.S. at 7 (1992) (quotation marks and citations omitted). While the absence of a
 12 serious injury is relevant to the Eighth Amendment inquiry, it does not end it. Hudson, 503 U.S.
 13 at 7. The malicious and sadistic use of force to cause harm always violates contemporary
 14 standards of decency. Whitley v. Albers, 475 U.S. 312, 327 (1986). However, the Eighth
 15 Amendment does not prohibit “de minimis uses of physical force, provided that the use of force is
 16 not of a sort repugnant to the conscience of mankind.” Hudson, 503 U.S. at 10 (cleaned up).

17 **B. Sexual Assault**

18 A sexual assault claim pursuant to the Eighth Amendment is established when a prisoner
 19 proves that a prison official, “acting under color of law and without legitimate penological
 20 justification, touched the prisoner in a sexual manner or otherwise engaged in sexual conduct” for
 21 the prison official’s “own sexual gratification, or for the purpose of humiliating, degrading, or
 22 demeaning the prisoner.” Bearchild v. Cobban, 947 F.3d 1130, 1144 (9th Cir. 2020). The Ninth
 23 Circuit has emphasized that: (i) “sexual assault serves no valid penological purpose”; (ii) “where
 24 an inmate can prove that a prison guard committed a sexual assault, ...the subjective component
 25 of the Eighth Amendment claim is satisfied”; and (iii) “an inmate need not prove that an injury
 26 resulted from [a] sexual assault ...” because it “is objectively ‘repugnant to the conscience of

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 28 ⁹ This order was entered by the magistrate judge previously assigned to this matter.

1 mankind' and therefore not de minimis for Eighth Amendment purposes." Id. (citation omitted).
 2 In other words, "[t]he current Eighth Amendment jurisprudence focuses on whether the alleged
 3 sexual harassment had a 'legitimate penological justification,' and was intended to sexually
 4 gratify the perpetrator or to 'humiliat[e], degrad[e], or demean[]' the inmate." Brewster v. Mills,
 5 2022 WL 976973, at *3 (N.D. Cal. Mar. 31, 2022) (noting that "the law regarding sexual abuse
 6 and sexual harassment has changed over time") (citation omitted).

7 **VI. Analysis**

8 The undersigned finds that defendant has met his initial burden of identifying those
 9 portions of the record which he believes demonstrate the absence of a genuine issue of material
 10 fact. The burden therefore shifts to plaintiff to establish the existence of a genuine issue of
 11 material fact with respect to his two Eighth Amendment claims. See Matsushita Elec. Indus., 475
 12 U.S. at 586 (1986). "This burden is not a light one. The non-moving party must show more than
 13 the mere existence of a scintilla of evidence." In re Oracle Corp. Securities Litig., 627 F.3d at
 14 387. Drawing all reasonable inferences in plaintiff's favor, plaintiff has not submitted sufficient
 15 evidence to create a genuine issue of material fact with respect to his claim that defendant
 16 committed a physical and sexual assault against him during the March 9, 2020 medical
 17 examination for the following reasons.

18 With respect to the physical assault claim, even in the light most favorable to plaintiff,
 19 there is no evidence that defendant applied any force in a malicious and sadistic manner so as to
 20 cause plaintiff harm during the medical examination. There is no dispute that defendant Dr.
 21 Uddin used a closed fist during plaintiff's back examination. However, Dr. Uddin explained that
 22 he used his closed fist on top of his other flat hand to touch plaintiff's back which is the medically
 23 accepted procedure for evaluating CVA back tenderness. Plaintiff has not come forward with any
 24 contrary evidence from a medical professional to dispute this.

25 Plaintiff has also not come forward with other circumstantial evidence that might indicate
 26 a malicious or sadistic mental state on the part of Dr. Uddin. See Mason v. Martinez, No. 2:14-
 27 cv-1041 MCE AC P, 2017 WL 1179405, at *9 (E.D. Cal. March 29, 2017) ("Plaintiff has
 28 presented no circumstantial evidence that would support an inference [the defendant] acted for the

1 purpose of causing him physical harm.”). The only disputed fact that arguably supports plaintiff
 2 is plaintiff’s testimony that Dr. Uddin “punched” him four times after he complained of pain.
 3 Specifically, plaintiff testified that (1) Dr. Uddin “punched” him four times, (2) plaintiff
 4 complained of pain, (3) Dr. Uddin then “did a circular motion on my disk,” (4) plaintiff then
 5 complained that “you can’t push that in,” and (5) plaintiff then “punched” him another four times.
 6 ECF No. 40 at 155 (Dep. Tr. at 58). But plaintiff also testified that those punches were “not as
 7 hard as a fight” and that “[i]t wasn’t like he was trying to fight me or nothing.” Id. In the context
 8 of an undisputed record concerning the medical appropriateness of Dr. Uddin’s use of his hands
 9 (including his knuckles) to evaluate plaintiff’s back pain, those four post-complaint “punches” are
 10 insufficient to create a meaningful dispute about whether Dr. Uddin acted maliciously and
 11 sadistically. See, e.g., Lombardo v. City of St. Louis, 594 U.S. 464, 468 (2021) (referencing “the
 12 careful, context-specific analysis required by [the Supreme] Court’s excessive force
 13 precedent”).¹⁰ As a result, there is no genuine issue of material dispute concerning plaintiff’s
 14 Eighth Amendment physical assault claim. Defendant is entitled to summary judgment on this
 15 claim.

16 Turning to the sexual assault claim, viewed in the light most favorable to plaintiff,
 17 defendant’s touching of plaintiff’s penis occurred in the course of a medical examination to rule
 18 out the possibility of an inguinal hernia based on plaintiff’s complaint of groin pain.¹¹ Plaintiff
 19 concedes that that it was reasonable that defendant would check for a possible hernia and he
 20 does not point to any evidence that defendant’s touching was done for any ulterior purpose.¹²

21 ¹⁰ While Lombardo involved a Fourth Amendment excessive force claims, context-specific
 22 analysis is no less relevant in Eighth Amendment excessive force claims.

23 ¹¹ To the extent that plaintiff bases his claim on the violation of CDCR policy and regulations
 24 including the Prison Rape Elimination Act, that is not sufficient to establish an Eighth
 25 Amendment violation. See Ybarra v. Bastian, 647 F.2d 891, 892 (9th Cir. 1981) (emphasizing
 26 that “Section 1983 protects against the ‘deprivation of any rights, privileges, or immunities
 27 secured by the Constitution and laws.’ ... Violations of state law alone are insufficient [to state a
 28 Section 1983 claim.]”); Porter v. Jennings, 2012 WL 1434986, at *1 (E.D. Cal. Apr. 25, 2012)
 (collecting cases holding that the Prison Rape Elimination Act does not create a private right of
 action to sue under 42 U.S.C. § 1983).

¹² Even relying on the comment that defendant “has seen bigger,” is not enough evidence for a
 jury to rely on to transform the hernia examination into a sexual assault. Plaintiff himself
 acknowledges that this statement by defendant may not have even referred to his penis.

1 Plaintiff does not establish that defendant's touching went beyond the scope of the exam or that it
 2 was done for defendant's sexual gratification. See Bearchild, 947 F.3d at 1145 (emphasizing that
 3 when the disputed conduct began as a procedure that served a legitimate penological purpose,
 4 "the prisoner must show that the guard's conduct exceeded the scope of what was required to
 5 satisfy whatever institutional concern justified the initiation of the procedure"); see also Brewster
 6 v. Mills, 2022 WL 976973, at *4 (N.D. Cal. Mar. 31, 2022) (finding that a defendant who
 7 "swiped" plaintiff's buttocks "a little bit" in the process of tightening handcuffs on plaintiff after a
 8 shower did not amount to a sexual assault under the Bearchild standard because of the
 9 penological purpose of affixing handcuffs and because plaintiff failed to demonstrate how
 10 defendant had exceeded the scope of that purpose). Although plaintiff indicates that he felt
 11 humiliated and degraded as a result, the relevant Eighth Amendment inquiry is whether
 12 defendant's touching was done for the purpose of humiliating or degrading plaintiff. Bearchild,
 13 947 F.3d at 1144. Therefore, plaintiff's focus on his emotional injury, which the court does not
 14 discount, does not establish that defendant subjectively intended this result. See Washington v.
 15 Hively, 695 F.3d 641, 643 (7th Cir. 2012) (explaining that "[a]n unwanted touching of a person's
 16 private parts, *intended to humiliate the victim* or gratify the assailant's sexual desires, can violate
 17 a prisoner's constitutional rights.") (emphasis added). Based on this record, there is no genuine
 18 issue in dispute concerning plaintiff's Eighth Amendment sexual assault claim. Thus, the
 19 undersigned finds that a jury could not reasonably find that defendant Dr. Uddin touched plaintiff
 20 in a sexual manner. As a result, defendant is entitled to summary judgment.¹³

21 **VII. Plain Language Summary for Party Proceeding Without a Lawyer**

22 Because you are representing yourself in this case, the court wants to make sure that you
 23 understand this order. The following information is meant to explain this order in plain English
 24 and is not intended as legal advice.

25 The undersigned magistrate judge has concluded that the facts of this case are not
 26 sufficiently in dispute to warrant a trial and can be resolved on the papers. This means that your

27 ¹³ In the interests of judicial economy, the undersigned declines to address the remaining
 28 arguments in support of defendant's summary judgment motion.

1 case is ending without a trial.

2 If you disagree with this recommended outcome, you have 21 days to explain why it is not
3 correct. Label your explanation as “Objections to Magistrate Judge’s Findings and
4 Recommendations.” The district judge assigned to your case will review the file and make the
5 final decision.

6 In accordance with the above, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff’s request for leave to file a sur-reply (ECF NO. 44-1) is granted for good
cause shown.
9 2. Defendant’s motion to strike plaintiff’s sur-reply (ECF No. 45) is denied.
10 3. Plaintiff’s motion to strike the Declaration of D. Anderson contained in his opposition
docketed on December 7, 2023 (ECF No. 38) is denied because the court has not relied upon the
12 declaration to reach its recommendation on the pending motion for summary judgment.
13 4. The Clerk of Court randomly assign this matter to a district court judge.

14 IT IS FURTHER RECOMMENDED that:

- 15 1. Defendant’s motion for summary judgment (ECF No. 31) be granted; and,
16 2. The Clerk of Court be directed to enter judgment accordingly and to close this case.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days
19 after being served with these findings and recommendations, any party may file written
20 objections with the court and serve a copy on all parties. Such a document should be captioned
21 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
22 objections shall be served and filed within fourteen days after service of the objections. The
23 parties are advised that failure to file objections within the specified time may waive the right to
24 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 DATED: February 18, 2025



26
27 SEAN C. RIORDAN
28 UNITED STATES MAGISTRATE JUDGE